

Vidya Amin.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 4928 OF 2014

Sana Yusuf Baugwala	...	Petitioner
VS.		
The State of Maharashtra & Ors.	...	Respondents

Mr. S.M. Gorwadkar, Senior Advocate a/w. Mr. Gurudas S. Gorwadkar i/b. Niranjana A. Mogre, Advocate for the petitioner.
Mr. Imtiyaz Ahmed I. Patel, Advocate for respondent nos. 2, 3, 4, 6, 7, 9 & 11.
Mr. A.R. Patil, APP for respondent no. 1/State.

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: 12th October, 2018**

P.C. :

Rule. Rule made returnable forthwith. By consent, the Writ Petition is heard finally and decided at the stage of admission, as the Petition is pending for admission since 2014.

2. The petitioner, who is the original complainant in C.C. No. 544/PW/2005, had challenged the order dated 28th March, 2012 passed by the learned Additional Chief Metropolitan Magistrate, 8th Court at Esplanade, Mumbai refusing to frame the charge under section 395 of Indian Penal Code. The trial Court has framed charges under sections 143, 147, 149 and 323 of the Indian Penal Code. It is the case of the petitioner/complainant that when she

along with her husband and family members was waiting to implement the order of Charity Commissioner for celebration of religious function, group of some accused attacked her husband and when she tried to intervene, they pushed her and her bag consisting of Rs.1,00,000/- was taken away. During the scuffle, mangalsutra of her sister-in-law was also stolen.

3. The learned counsel for the petitioner/original complainant has submitted that he relied on the statement of the petitioner-Sana Yusuf Baugwala and also the statements of petitioner's husband-Yusuf Suleman Baugwala, and sister-in-law Saira Samad Baugwala. He submitted that the respondents/accused at the relevant time assaulted the husband of the petitioner and they all robbed the petitioner of her bag consisting of Rs.1,00,000/- and the mangalsutra of her sister-in-law. This amounts to dacoity and Section 395 which was initially included at the time of recording of FIR when the offence was registered at C.R. No. 270 of 2002. However, it was deleted when the charge sheet was filed and, therefore, the petitioner has moved an application to the Additional Chief Metropolitan Magistrate of framing charge against the accused under section 395 of Indian Penal Code.

4. While opposing this Writ Petition, learned APP and learned counsel for the respondents/original accused have supported the order passed by the learned Additional Chief Metropolitan Magistrate and further order passed by the Magistrate Court and submitted that in view of the allegations made by the petitioner and other witnesses, no offence of dacoity under section 395 is made out. It was further argued that the trial Court enjoys the power to alter, amend, frame additional charge during the trial and thus, if the evidence to that effect adduced by the prosecution, then charge under section 395 of Indian Penal Code can be framed.

5. Perused the relevant statements and the order of rejecting the Application of adding charge under section 395 of Indian Penal Code. It is not the case of dacoity, hence no charge under section 395 can be framed. However, in the statement of the petitioner, she has stated that her bag consisting of Rs.1,00,000/- was snatched by one Abdul Kayyum Rajani and mangalsutra of her sister-in-law was stolen in the scuffle. If these allegations are made in the FIR and if other witnesses have also stated so, then the statement of taking away property forcibly is shown. The trial

Court may consider whether charge can be framed for robbery under section 392 or not? If the trial Court thinks fit, may frame charge under section 392 of Indian Penal Code and if the trial Court thinks that instead of framing charge under section 392, if evidence to that effect is brought on record by the prosecution, then at that stage, immediately charge can be added. The said course also can be adopted by the trial Court. However, it is always better to frame charges precisely to enable the accused to have knowledge for which he is prosecuted and what charges he is to meet. Accordingly, he can take defence in the cross-examination. The power to alter or delete the charge always vest with the Court

6. With this, I am of the view that no interference is required in the order dated 28th March, 2012 passed by the learned Additional Chief Metropolitan Magistrate, as the material to frame charges under section 395 is not found in the matter.

7. Writ Petition is dismissed

(MRIDULA BHATKAR, J.)